

4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 2082/89

DATE OF DECISION: 2.3.1990.

RAJ PAL SINGH

APPLICANT

SHRI V.P. SHARMA

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

MRS. RAJ KUMARI CHOPRA

ADVOCATE FOR THE RESPONDENTS
NO. 1, 2, 3

SHRI R.L. SETHI

ADVOCATE FOR THE RESPONDENT
NO. 4

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal *no*

JUDGEMENT

(Of the Bench delivered by the Hon'ble Mr. I.K. Rasgotra, Member (A))

Shri Raj Pal Singh, the applicant has filed this application against the order dated 25.4.1989 terminating his services as Extra-Departmental Branch Post Master (EDBPM) Islamabad, under Section 19 of the Administrative Tribunals Act.

2. The facts of the case adduced in the O.A. in brief are that the applicant was appointed as EDBPM on 26.12.1988 (page 11 of the paper book) and his services were terminated in terms of

order No. AD 39 Islamabad/Bijnore dated 25.4.89 (page 7 of the paper book) under Rule 6 of P&T EDA Conduct & Service Rules which reads as under:-

"The services of an employee who has not already rendered more than three years continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice."

The applicant has further contended that his service was terminated to give undue advantage to Respondent No. 4 who has been employed as EDBPM after terminating his services. By way of relief he has prayed that:

- (i) the impugned order dated 25.4.89 terminating his service as EDBPM should be quashed;
- (ii) he should be deemed to be in continuous service of the respondents' department. The order No. AD37-Islamabad dated 25.4.1989 (p.8 of the paperbook) appointing respondent No.4 should be quashed;
- (iii) he should be paid arrears of the account of back-wages.

The applicant made a representation to the PMG, UP Circle on 8.6.1989 which was followed up by reminders dated 12.7.89 and 2.8.1989. No reply was received till he filed this application on 5.10.1989.

2. The case was heard on 15.2.1990. The Ld. Counsel for the applicant submitted that the services of the applicant should have been terminated in terms of Rule 5 of the CCS Temporary

6

Service Rules and not under Rule 6 of Extra-Departmental Staff Conduct and Service Rules of the P & T Department. The applicant was sponsored by the Employment Exchange and was selected by a Departmental Promotion Committee duly constituted for the purpose. He was appointed as EDBPM after all formalities were complied with. His employment order (annexure A-4) was issued by Superintendent of Post Offices, Bijnore vide letter No. AD 39 Islamabad of 21.12.1988. The applicant's services were terminated only to accommodate respondent No. 4 who had preferred an appeal to the Appellate Authority for reinstatement as EDBPM, Islamabad. The Ld. Counsel for the applicant cited the following cases to support his contention that services of the applicant could be terminated only after following the process dictated by principles of natural justice.

- a) ATR 1987 (2) CAT 587, Raipada Biswas Vs. UOI and others.
- b) 1983 (3) SLJ 565, CAT, N. Basu & Others Vs. Inspector of RMS 'TV' Ist Division, Trivandrum.
- c) 1984(1) SLJ 157, E. Kunhiraman Nair Vs. The Superintendent of Post Offices, Cannanore Division and others.

3. The Ld. Counsel for respondent No. 1, 2 and 3 submitted that the applicant has not exhausted the departmental remedies before rushing to the Hon'ble Tribunal. He had filed a representation on 8.6.1989 and had not waited for an answer from the department. It was further submitted that Extra-Departmental Employees are governed by specific Rules and not by the CCS Temporary Service Rules, which are not applicable to the Extra Departmental employees of P & T Department. It was further submitted that the appointment letter dated 21.12.1988 given to

the applicant unambiguously states that:-

"Shri Raj Pal Singh should clearly understand that his employment as EDBPM, Islamabad shall be in the nature of a contract liable to be terminated by him or by the undersigned by notifying the other in writing and that he shall also be governed by the Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964 as amended from time to time."

The Ld. Counsel further stated that the appointment of the applicant was purely as a stop-gap arrangement till the original EDBPM came back to the job.

4. The Ld. Counsel for the respondent No. 4 submitted that Shri Ashok Kumar, respondent No. 4 was initially appointed EDBPM on 21.9.1987 and his services were terminated on 26.12.1988. He preferred an appeal to the Appellate Authority against the termination of his services. He was reappointed as EDBPM, Islamabad on 26.4.1989 consequent to the acceptance of his appeal by the Appellate Authority. He is continuing as EDBPM since then. The only period since 21.9.1987 when the applicant occupied the post of EDBPM, Islamabad was between 26.12.1988 and 25.4.1989.

5. We find that the respondent No. 4 had been working as EDBPM from 21.9.1987. His services were terminated on 26.12.1988. He appealed against the order of termination which was allowed by the competent authority. As a result of the acceptance of his appeal he was reappointed on 26.4.1989. It was only during the short period of interruption in his service from

8

26.12.1988 to 25.4.1989 that the applicant was employed as EDBPM in place of respondent No. 4. The short service of 4 months does not, therefore, give any right or precedence to the applicant over respondent No. 4 who was holding the post for one year and three months before the applicant was employed and who subsequently replaced the applicant on his appeal being allowed against termination of his service by the competent authority. We have also carefully considered the case law cited by the Ld. Counsel for the applicant mentioned in paragraph 2 above. We are of the view that the facts and circumstances of the case before us are clearly distinguishable from the cases cited by the Ld. Counsel for the applicant.

6. In the facts and circumstances of the present case we do not find any merit in the application which accordingly is dismissed with no orders as to the costs.

Abulgha
(I.K. Rasgotra)

Member (A)

2/3/90

Abhaya 2/3/90
(T.S. Oberoi)

Member (J).